

Application Serial No. 09/943,109
Attorney Docket No. 60027.0307US01/BS01158
Amendment After Final

REMARKS

This Amendment is in response to the final Office Action mailed November 23, 2005. Claims 1-22 were examined in the Office Action. Claims 1-22 were rejected. No new claims have been added. Applicant respectfully requests reconsideration and examination in view of the following remarks.

Claim Rejections – 35 USC § 102

Claims 1-5, 7-13, 17, 18, 20, and 22 were rejected under 35 U.S.C. 103(a) as being anticipated by Bhogal et al. (US: 2002/0193092, hereinafter "Bhogal"). Applicant respectfully submits, however, that Bhogal does not qualify as prior art under 35 U.S.C. §102(e). The filing date of the Bhogal published application is June 14, 2001. The Declaration of Shannon M. Short under 37 C.F.R. §1.131 establishes conception of the invention defined by the claims in the present application in the United States prior to June 14, 2001 and, coupled with due diligence, establishes filing of the present application on August 30, 2001. The Office Action states that the evidence submitted was insufficient to establish diligence from a date prior to the date of reduction to practice of Bhogal to either a constructive or actual reduction to practice.

Responsively, Applicant respectfully submits that the period between June 12, 2001 and June 14, 2001 is an excused period when the Applicant was awaiting a draft of the patent application from outside counsel after a disclosure meeting on May 31, 2001. Evidence of the disclosure meeting and the proposed first draft date were provided with the declaration as exhibits. According to MPEP 715.07(a), such inventor inactivity is excused. Exhibit 1 is a letter dated June 11, 2001 that outlines a period for drafting the patent application after conducting the disclosure meeting of May 31, 2001. Therefore, the evidence submitted along with the present explanation satisfies the diligence requirement. Thus, the rejection of claims 1-5, 7-13, 17, 18, 20, and 22 under 35 U.S.C. §102(e) should be withdrawn.

Dependent Claims 2-5, 10-13, 18, 20, and 22

Regarding claims 2-5, 10-13, 18, 20, and 22, Applicant submits that claims 2-5, 10-13, 18, 20, and 22 are in condition for allowance by virtue of their dependency on amended claims 1 and 17. MPEP §2143.03 citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

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Accordingly, Applicant respectfully requests withdrawal of the rejection to claims 2-5, 10-13, 18, 20, and 22. Regarding the Examiner's additional assertions, which have not been addressed specifically, Applicant respectfully submits that these arguments are moot in view of the above remarks. Accordingly, in view of the above arguments, Applicant respectfully submits that claims 2-5, 10-13, 18, 20, and 22, are in condition for allowance.

Claim Rejections – 35 USC § 103

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bhogal et al as applied to claim 1 above.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bhogal et al as applied to claim 1 over, and in view of Chavez (US: 6058305).

Claims 15 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bhogal et al as applied to claim 1 above, and in view of Joyce et al (US: 6320947).

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bhogal et al as applied to claim 1 above, and in view of Matsuzaki et al (US: 6289314).

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bhogal et al as applied to claim 2 above.

Claims 6-9, 14, 15, 16, and 21

Regarding claims 6-9, 14, 15, 16, and 21, Applicant submits that claims 6-9, 14, 15, 16, and 21 are in condition for allowance by virtue of their dependency on amended claims 1 and 17. MPEP §2143.03 citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Accordingly, Applicant respectfully requests withdrawal of the rejections to claims 6-9, 14, 15, 16, and 21. Regarding the Examiner's additional assertions, which have not been addressed specifically, Applicant respectfully submits that these arguments are moot in view of the above comments and the amendment to the claims. Accordingly, in view of the above arguments, Applicant respectfully submits that claims 6-9, 14, 15, 16, and 21, are in condition for allowance.

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CONCLUSION

Applicant respectfully requests that this After Final remark and explanation be entered, thereby placing the claims in condition for allowance. Applicant respectfully submits that the remark and explanation do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Respectfully submitted,

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